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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,889	12/30/2003	Jay Z. Muchin	039014-0101	7443

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10611 W. HAWTHORNE FARMS LANE
MEQUON, WI 53097

EXAMINER

REYNOLDS, STEVEN ALAN

ART UNIT PAPER NUMBER

3728

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

11

Office Action Summary	Application No. 10/748,889	Applicant(s) MUCHIN ET AL.	
	Examiner Steven Reynolds	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/13/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 20-85 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/30/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Invention I in the reply filed on 9/13/2006 is acknowledged. After further review of the application, claims 29 and 30 belong to Invention II as they are drawn to a battery marketing system. Claims 1-19 will be examined and claims 20-85 are withdrawn from consideration.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 15 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 15, it is not clear whether the opening is the means for enabling rotation of at least one of the batteries or if it is a separate structure. Regarding claim 19, the phrases "etc." and "not previously related to a battery and/or its use" are vague and indefinite.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

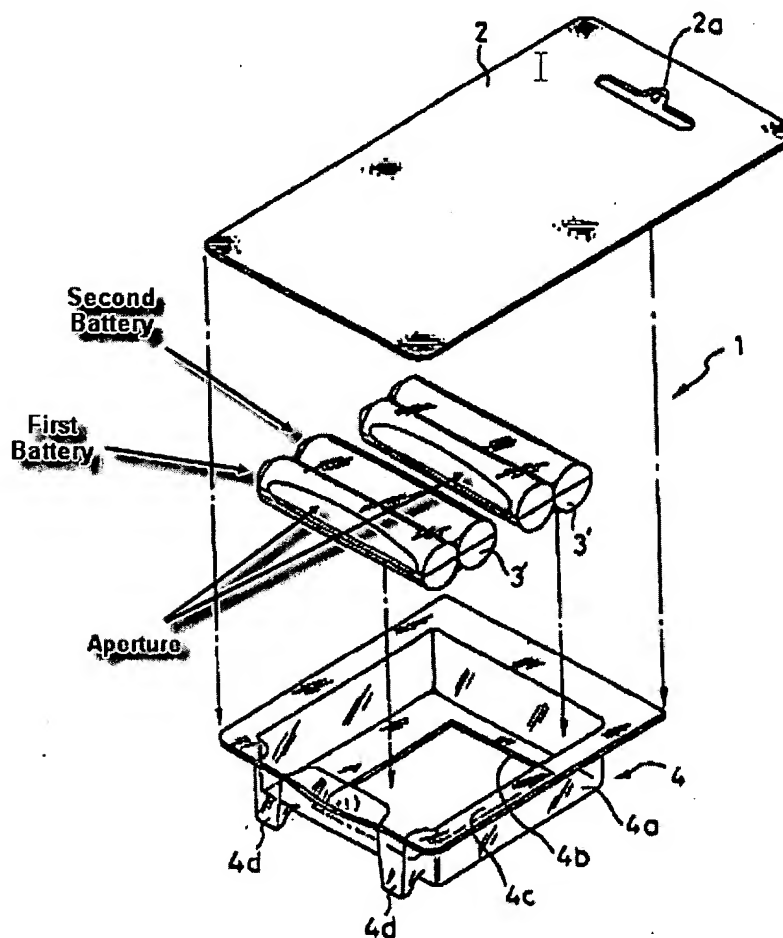
A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1-9, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Kumakura et al. (US 5,735,404). Kumakura et al. discloses a battery bundle (packing part 3', See Fig. 3 embodiment) comprising a first battery having a first outer surface; a second battery having a second outer surface; a packaging binding the first battery and the second battery (packing part 3'); wherein the packaging has at least one transparent portion adjacent to at least portions of the first graphic and the second graphic (See Figs. 2 embodiment and column 3, lines 41-43 about the transparent portion); wherein the transparent portion extends substantially completely about the first outer surface and the second outer surface (See Fig. 3 embodiment); wherein the first battery and the second battery are substantially aligned end-to-end in the packaging (See Fig. 3 embodiment); wherein the battery bundle includes batteries in addition to the first battery and the second battery and wherein all of the batteries bound by the packaging are aligned end-to-end in the packaging (See Fig. 2 embodiment); wherein the packaging includes a tube containing all of the batteries (packing part 3, See Fig. 2 embodiment); wherein the packaging includes a plurality of tubes (two packing parts 3', See Fig. 3 embodiment); and wherein the packaging includes a single tube (packing part 3, See Fig. 2 embodiment) and a flexible membrane (packing parts 3 and 3') configured to engage at least one battery to facilitate rotation (aperture enables rotation of battery through said aperture); and least one graphic ("BATTERY" shown in Fig. 8 embodiment) is targeted toward a specific group of consumers, those who are in need of purchasing batteries.

Regarding the specific content of the graphics on the batteries contained in the package, it is well known in the art that batteries normally have plus and minus signs as part of the standard outer surface design. Therefore, with regard to the package of Kumakura et al., on said first battery the first graphic of a plus sign is distinct from the second graphic of a minus sign on said second battery.



Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

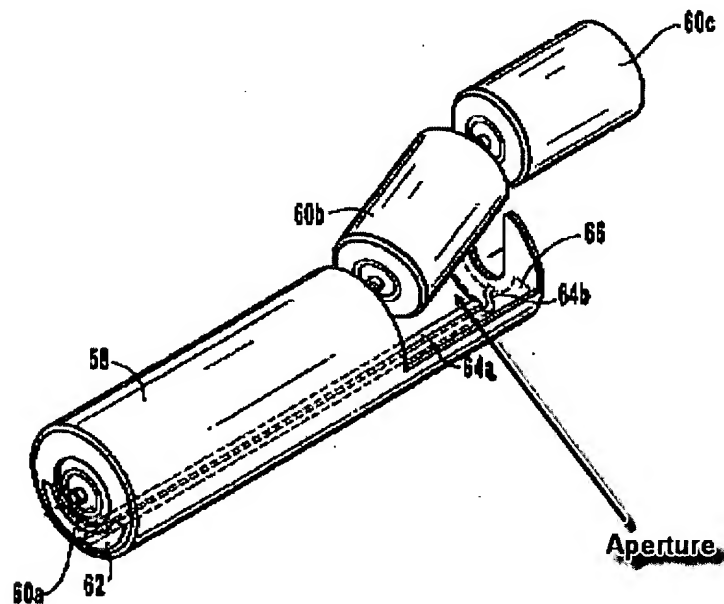
1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1, 10-15, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watterson et al. (US 2002/0149928). Watterson et al. discloses a battery bundle (cartridge 58, See Fig. 2 embodiment) comprising a first battery having a first outer surface; a second battery having a second outer surface; a packaging binding the first battery and the second battery (cartridge 58); the package has an aperture (See figure below) adjacent to said outer surfaces of at least one battery; said battery bundle includes additional batteries bound in the bundle (See Fig. 4 embodiment); means for enabling manipulation of the first battery to facilitate viewing of the first graphic (aperture shown below); means for enabling manipulation of the second battery to facilitate viewing of the second graphic (Removing said first battery through said aperture, enabling manipulation of said second battery through said aperture); means for enabling rotation of either the first or second battery while within the package (aperture allows user to rotate the batteries); an opening (aperture shown below) to enable manual contact with the first or second battery; and the first and second battery have a distinct

outer surface texture, as it is well known by one of ordinary skill in the art that all batteries have a outer surface texture.

Regarding claim 19, at least one graphic is selected from the group including artwork, as it is well known in the art for the graphics on a battery to include the brand name logo.

Watterson et al. discloses the claimed invention except for the first graphic being distinct from the second graphic. It is well known and would have been obvious to use different brands of batteries together in the cartridge if that is all the consumer has to use in combination. Therefore, the graphics on the different brands of batteries will be distinct from each other.



Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Munck (US 3,424,306), Whitt et al. (5,117,976), Weiss et al.

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(6,127,024), Huguen et al. (5,747,192), Juaristi (5,429,233), Bell (4,378,068), Sullivan (5,958,618), Swezey (3,796,306), Ward (5,823,350), and Zaborney et al. (5,443,668).

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Reynolds whose telephone number is (571)272-9959. The examiner can normally be reached on Monday-Thursday 8:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SR



Mickey Yu
Supervisory Patent Examiner
Group 3700